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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,031	08/04/2003	Peter L. Cassidy Phillips	1060A	5285

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EXAMINER

PHAM, HUONG Q

ART UNIT	PAPER NUMBER
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3772

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,031

Applicant(s)

PHILLIPS, PETER L. CASSIDY

Examiner

Huong Q. Pham

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/7/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Douglas (2,221,785).

Douglas teaches every claimed feature of the claims including a generally elongated massage body 18a, 18a (figure 1) with at least one resilient layer and having a first end and a second end spaced-apart from said first end; spaced-apart circular wheels 19 carried by said first end and said second respectively, of said massage body, and wherein said massage body has a continuous convex configuration between said first end and said second end of said massage body. As for claim 2, note that said at least one resilient layer comprises at least one elastic layer and at least one compressive layer. As for claim 3, note the core 16 extending through said massage body and wherein said spaced-apart wheels are carried by said core. As for claim 4, note that the resilient layer comprises at least one elastic layer and at least one compressive layer surrounding said core. As for claim 11, note the massage body 18a, 18a, elastic layers 19, 18a, 18a, 19 (figure 1 , layers arranged from

left to right), one compressive layer 18a, circular wheels 19, fabric cover 18a. as for claim 13, note the bolt 10.

Claims 1-4, 7-8, are rejected under 35 U.S.C. 102(b) as being anticipated by Douglas (3,298,687).

Douglas teaches every claimed feature of the claims including a generally elongated massage body (figure 6) with at least one resilient layer and having a first end and a second end spaced-apart from said first end; spaced-apart circular wheels 34 carried by said first end and said second respectively, of said massage body, and wherein said massage body has a continuous convex configuration (the circular surface between wheels 34, capable of being used as a massaging body or surface) between said first end and said second end of said massage body. As for claim 2, note that said at least one resilient layer comprises at least one elastic layer and at least one compressive layer. As for claim 3, note the core extending through said massage body and wherein said spaced-apart wheels are carried by said core. As for claim 4, note that the resilient layer comprises at least one elastic layer and at least one compressive layer surrounding said core.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10, 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas (2,221,785).

As for claims 5, 7, 9, 12, 14, note the elastic layers 19, 18a, 18a, 19 . It would have been obvious to one ordinary skill in the art at the time the invention was made to choose the type of elastic material suitable for the desired massaging effect, based on the well known properties of the elastic material.

Claims 5-6, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Douglas (3,298,687).

Note the elastic layers 34, 33, 20, 21 (figures 1, 4, 6) . It would have been obvious to one ordinary skill in the art at the time the invention was made to choose the type of elastic material suitable for the desired massaging effect , based on the well known properties of the elastic material.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Douglas (3,298,687) in view of Pepera (6499,485) or Douglas (2,221, 785).

As for claim 11, Douglas(3,298,687) teaches (figure 6) the massage body (34, 34, and the area between 34, 34), elastic layers 34, 33, 20, 21, etc. (figure s1 , 4, 5, 6), at least one compressive layer ,circular wheels 34, 34 . Note that the convex configuration is the circular surface between wheels 34. Pepera teaches removable

cloth sleeve 150 (figure 6). Douglas (2,221, 785) teaches cover cloth 18a (figure 1). In view of the teaching of Pepera (6499,485) or Douglas (2,221, 785). , it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Douglas (3,298,687) with a fabric cover for comfort of a user.

Allowable Subject Matter

Claims 15-16 are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 7:15 AM - 3:45 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272 - 4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 29, 2006



MICHAEL A. BROWN
PRIMARY EXAMINER